



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0232]

RIN 1625-AA87

Security Zone; Congressional Visit, Miami Beach, FL

AGENCY: Coast Guard, DHS

ACTION: Temporary final rule

SUMMARY: The Coast Guard is establishing a temporary security zone for certain navigable waters of Biscayne Bay and the Atlantic Intracoastal Waterway near Miami Beach, Florida. The moving security zone will encompass all navigable waters within 100 yards of the M/V BISCAYNE LADY. This action is necessary to protect an official party, public, and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Miami, or a designated representative.

DATES: This rule is effective from 6 p.m through 11 p.m. on March 25, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0232 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Benjamin Adrien, Waterways Management Division, U.S. Coast Guard; telephone: (305) 535-4307, email: Benjamin.d.adrien@uscg.mil

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. Local authorities asked the Coast Guard to establish the security zone within several days of the request, therefore the Coast Guard lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule, since this rule is needed by March 25, 2023. This rule is needed to prevent vessels from approaching the VIP location in Miami Beach, FL. It would be contrary to public interest to postpone establishing the temporary security zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable because immediate action is needed to prevent interference with the VIP visit to Miami Beach, FL.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70124. The Captain of the Port (COTP) Miami has determined the VIP visit on March 25, 2023

presents a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. This moving security zone is necessary to protect the official party, public, and surrounding waterways surrounding the M/V BISCAYNE LADY in Miami Beach, Florida.

IV. Discussion of the Rule

This rule establishes a moving security zone from 6 p.m. through 11 p.m. on March 25, 2023. The moving security zone will cover all navigable waters within 100 yards of the M/V BISCAYNE LADY. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Miami or a designated representative. If authorization to enter, transit through, anchor in, or remain within the security zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. The moving security zone is limited in size and location as it will encompass all navigable waters within 100 yards of the M/V BISCAYNE LADY,

transiting through the ICW in the vicinity of Miami Beach, FL. Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the security zone without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period. Furthermore, the rule will allow vessels to seek permission to enter the zone. Persons and vessels may only enter, transit through, anchor in, or remain within the security zone during the enforcement period if authorized by the Captain of the Port Miami or a designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted

for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary moving security zone lasting approximately 5 hours that will prohibit entry of persons or vessels during the VIP visit in Miami Beach, Florida. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

A Draft Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

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PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T07-0232 to read as follows:

§ 165.T07-0232 Security Zone; VIP Visit, Miami Beach, FL

- (a) *Locations.* The following is a temporary moving security zone:

- (1) All waters within 100 yards of the M/V BISCAYNE LADY, Miami Beach, FL from 6 p.m. until 11 p.m. on March 25, 2023.

- (b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP in the enforcement of the security zone.

- (c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the security zone described in paragraph (a) of this section unless authorized by the COTP Miami or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP Miami or designated representative.

- (2) Persons who must notify or request authorization from the COTP may do so by telephone at (305) 535-4313 or may contact a designated representative via VHF radio on channel 16.

(d) *Enforcement Period.* This rule will be enforced from 6 p.m. through 11 p.m.
on March 25, 2023.

Dated: March 17, 2023.

F. J. Del Rosso
Captain, U.S. Coast Guard,
Acting, Captain of the Port Miami
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